

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:15CR41
(Judge Keeley)

FRANK J. GALLO,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING**

On June 11, 2015, the defendant, Frank J. Gallo ("Gallo"), appeared before United States Magistrate Judge John S. Kaull and moved for permission to enter a plea of GUILTY to the one Count Information. Gallo stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

At the outset of the hearing, the magistrate judge accepted Gallo's waiver of indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure. Since the offense charged in the Information naming Gallo is punishable by a term of imprisonment of

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING**

greater than one year, the Court questioned him to determine if his waiver of prosecution by indictment was being freely given in a sober and knowledgeable fashion.

The magistrate judge then advised Gallo of the nature of the charge in the Information, and confirmed that he had read and reviewed it with counsel.

Next, the magistrate judge explained Gallo's constitutional right to proceed by a grand jury indictment, and that the United States is able to charge him by Information only if he waives this right. The magistrate judge explained the Grand Jury process to Gallo, following which he confirmed his understanding of this right, and that, by waiving it, the United States could proceed to charge him with the Information as though he had been indicted. Gallo then signed a Waiver of Indictment in open court, which the Court ordered to be filed.

Based upon Gallo's statements during the plea hearing and the testimony of Special Agent Tamela Devericks, Internal Revenue Service, the magistrate judge found that Gallo was competent to enter a plea, that the plea was freely and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING**

tendered plea. On June 15, 2015, the magistrate judge entered an Opinion/Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 16) finding a factual basis for the plea and recommended that this Court accept Gallo's plea of guilty to the one count Information.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. After which, the parties did not file any objections.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Gallo's guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in the one count Information.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING

1. The Probation Officer undertake a presentence investigation of **FRANK J. GALLO**, and prepare a presentence report for the Court;

2. The Government and Gallo are to provide their versions of the offense to the probation officer by **July 14, 2015**;

3. The presentence report is to be disclosed to Gallo, defense counsel, and the United States on or before **August 31, 2015**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **September 14, 2015**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **September 21, 2015**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **October 5, 2015**.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING**

The magistrate judge continued Gallo on bond pursuant to the Order Setting Conditions of Release (dkt. no. 15) entered on June 11, 2015.

The Court will conduct the sentencing hearing for the defendant on **Monday, October 19, 2015 at 9:30 A.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: June 29, 2015

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE